Materials from Belarusian NPOs prepared for the Universal Periodic Review of Belarus in the U.N. Committee on Human Rights. October 2009

This compilation of materials was prepared in August-September 2009 by a group of NGOs for conveyance to the Office of the UN High Commissioner for Human Rights in conjunction with the preparation of the Universal Periodic Review of the Republic of Belarus' fulfillment of its international human rights obligations. These materials contain references to more detailed reports and publications. The following organizations participated in the preparation of these materials: International Federation for Human Rights (FIDH), Belarusian Helsinki Committee (BHC), Belarusian Association of Journalists (BAJ), «Viasna» Human Rights Center, Assembly of Democratic Non-Governmental Organizations of Belarus and Congress of Independent Unions (Belarus).

Contents:

The General Dynamic of the Human Rights Situation in Belarus

1. Over the past decade the situation in Belarus has distinguished itself by the occurrence of serious systemic problems with human rights that have been the subject of constant criticism both within the country as well as in the international arena. UN bodies, European Union, Council of Europe, and OSCE have adopted dozens of critical resolutions, the majority of whose demands have not been fulfilled by the country's leadership. In particular:

a) existing law unduly limits fundamental rights and human freedoms, which in practice creates serious impediments to their realization.

b) the principles of the rule of law are seriously violated which leads to the selective application of law for political and economic purposes, several dozen of activists having become political prisoners.

c) leveling of the role of the legislative and judicial branches, as well as of local government, due to the gradual increase of the Presidential authority, has led to a significant weakening of the mechanisms for protecting and restoring human rights.

d) beginning in August 2008 Belarusian authorities undertook specific steps to improve the situation by authorizing the early release of political prisoners, in the first place, and by decreasing the level of suppression against opposition activists. This reflected positively on the lowering the atmosphere of fear in the society. In some instances the authorities have not resorted to excessive bans on the ability to realize political and civil rights, however demonstrating limiting and discriminating practices in other cases. At the time of writing of this report changes in legislation that would signify any systemic progress towards democratization have not yet been adopted.

2. Since 2003 the Government of Belarus and government authorities have practically curtailed all cooperation with human rights organizations on issues related to promotion of human rights. The situation began to change in the beginning of 2009 when the Community Advisory Council under the Presidential Administration of Belarus, whose goal was defined as discussion of the most serious socio-political issues and whose participants included a representative of the BHC, as well as the civic coordinating committee on mass media, which contained a representative of the BAJ, were established. These bodies conducted several sessions. So far their work hasn't been very effective.

3. The country's leadership has practically ignored resolutions and recommendations of intergovernmental bodies on human rights in Belarus. For an extended period of time the country presented no periodic reports on fulfillment of obligations under key treaties and conventions of the UN, and refused to cooperate with the UN thematic and country special rapporteurs and did not fulfill their recommendations. The government refuses to fulfill decisions of the UN Committee on Human Rights pertaining to individual complaints. Belarus is the only country located in Europe that has not joined the Council of Europe.

Belarus has not signed or ratified the Optional Protocol to the International Convention Against Torture, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the Rome Statute of the International

Criminal Court, The Convention on Enforced and Involuntary Disappearances, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has not ratified The Convention on the Rights of Persons with Disabilities, but at present has begun preparations to join it.

4. As of the time of preparation of these materials no special government institutions for the protection of human rights have been created in Belarus, there is no Institute of Ombudsman. Such functions, among others, fall under the competence of certain government bodies. However these bodies do not conform to the Paris principles, and their activities in the area of protection of human rights are ineffectual in practice.

5. During the preparation of these materials meetings were held between the writers of these materials, officials of the Ministry of Foreign Affairs, and the First Deputy Chief of the Presidential Administration, Mr. N. Petkevich, during which officials were informed of the key problems with human rights which would be the focus of this critique for the purpose of facilitating a resolution of the existing problems.

The Right to Life [1]

The Constitution guarantees every individual the right to life, and it firmly establishes the temporary nature of capital punishment, and that its use is intended as an extraordinary form of punishment. At present the Republic of Belarus is the only country in Europe as well as among the countries of the former USSR that exercises capital punishment. There is no official information on the number of executions that have been performed, the media only contains information on the number of death sentences. Since 1997 about 140 of such sentences have been passed.

The procedures for performing executions in Belarus have been determined to be inhumane and barbarous by the UN Committee on Human Rights: relatives are given no information about the date of executions, the personal possessions of the executed individuals are not released, including the bodies for their subsequent burial, and the location of internment is not released. Individuals condemned to death by a verdict of the Supreme Court are deprived of the possibility of appealing the verdict, because decisions of the Supreme Court enter into force immediately after being passed.

We should note the positive tendency toward the introduction of the moratorium on executions. Representatives of the highest bodies of state have repeatedly announced their readiness to introduce such a moratorium. The Constitutional Court considers a full abolition of capital punishment to be possible.

The Belarusian officials either have not made sufficient efforts to investigate high-profile cases involving the forced, politically motivated disappearances of B. Gonchar, D. Zavadsky, Yu. Zakharenko and A. Krasovsky or else nothing is known of such efforts. The international community suspects highly placed Belarusian officials of involvement in their disappearances and possible extrajudicial executions.

The use of the death penalty in Belarus causes particular concern in conjunction with the absence of independence of the judicial system and lawyers, the occurrence of torture being used during preliminary investigations as well as other impermissible investigative methods, a clear imbalance between the authorities of the prosecution and rights of the defense. Both Belarusian human rights advocates and international organizations have called attention to this particular aspect on more than one occasion

The Ban on the Use of Torture and Cruelty [2]

The Constitution contains a ban on the use a torture, cruelty, inhumane or degrading treatment or punishment as well as on involuntary medical and other experiments. The impermissibility of torture and responsibility for its use is addressed in other laws and regulations, including procedural ones. Legislation provides for responsibility for the use of torture and other forms of cruelty by public officials. However, the term «torture» is not defined in legislation. There is no practice of bringing people to account for using torture. There are individual instances of punishments for exceeding official authority. Human rights advocates receive numerous complaints about the use of torture by law enforcement authorities.

Belarus's penitentiary system is closed to any public oversight, which does notP allow one to study the conditions of the inmates sufficiently. The use by officials of torture and cruelty on the detained and arrested has a latent character; information on this rarely becomes public.

Bodies of the Ministry of Justice have established civic commissions for the monitoring of the penitentiary institutions, but their work has been ineffectual. Human rights advocates have not been included in these commissions. The confinement conditions in prisons, treatment of convicts and individuals in custody, can be considered to be to a great extent either cruel treatment or torture.

Facts concerning the use of torture and other inhuman acts by law enforcement officials on arrested participants of opposition protests have been established.

The predicament of individuals detained in psychiatric hospitals, rehabilitation clinics and institutions, where the forced treatment of TB patients takes place, causes concern. In this regard, cases of hunger strikes by patients in protest to their unsatisfactory conditions and treatment have been noted.

The Ban on Forced Labor [3]

Belarus ratified the Convention on Forced Labor and the Convention on the Abolition of Forced Labor. The prescriptions of international law are encompassed in the Constitution and the Labor Code. The analysis of the legislation and existing practice demonstrates that forced labor is used in Belarus. Elements of forced labor can be discerned in the following areas.

The Law «On the Status of Servicemen» permits «using servicemen during the term of their military service to perform work and fulfill other duties not pertaining to military service». The Ministry of Defense uses servicemen during the term of their military service to perform work and other duties not pertaining to military service. Servicemen do not perform this on a voluntary basis, but do so under threat of punishment for disobeying orders. No payment for their labor is provided for.

In 2002 the mandatory work placement of all graduates of educational institutions (young specialists) who received an education paid for by government funds was introduced into the Law «On Education.» These individuals are obligated to work - for one year following a professional-technical education and two years after receiving an intermediate specialized or higher education - at places determined by commissions for placement of graduates. The placement of young specialists to jobs in Belarus is used as a method for

mobilizing and exploiting labor for the economic development of the country and individual regions ignoring the principal of a voluntary employment. Employers are forbidden from dismissing young specialists before the end of the mandatory work period, with the exception of dismissal of the young specialists for cause. As a punishment the young specialist is required to repay the costs of his education.

In 2006 Presidential Decree No 18 «On Additional Measures of State Protection of Children from Underprivileged Families» was adopted. Under this decree children from underprivileged families are taken from their parents in an extrajudicial manner, the parents are required to reimburse the costs of maintaining the children in state child care facilities. In case of a failure to pay back the expenses, the decree provides for forced employment (upon the decision of a court), and in case of refusal to comply, for criminal liability.

The Law «On Measures for the Compulsory Intervention with Respect to Chronic Alcoholics and Drug Addicts Who Systematically Violate Public Order or the Rights of Other Individuals» establishes that «chronic alcoholics and drug addicts may be upon a court decision involuntarily isolated for a period of time from one year to one and a half years in a medical-labor clinic for the purposes of their social re-adaptation and they are obliged to perform compulsory labor.» These individuals are not covered under existing labor legislation.

The Right to Freedom and Personal Inviolability. Illegal Detention and Arrests [4]

The introduction in 2000 of the Code of Criminal Procedure (CCP) preserves the traditional shortcomings in the regulation of detention and the use of placement into custody as a measure of restraint. The CCP prescribes to explain the grounds for detention of an individual and his rights only after bringing the detained individual to the criminal prosecution authority and compiling of a statement, and not during his or her actual apprehension (Art. 110).

Any individual suspected of committing heinous crimes, under circumstances indicated in the CCP, may be detained for a period of up to 10 days solely on the basis of a resolution of a criminal prosecution authority (Art. 108). At the expiration of this time the question of applying means of restraint is decided, or the individual is freed. In such cases the law does not provide for any sort of compensation.

Placing and individual into custody as a measure of restraint is sanctioned and can be prolonged by the prosecutor's office, although the prosecutor's office is the one making the case against the individual in court, i.e. it is an interested party. Decisions regarding the issuing of such sanctions can be made in the absence of the suspect. In case of suspicion of committing a grave or heinous crime placing into custody can be applied solely based on the seriousness of the crime, without any consideration of the suspect's personality, and without any evaluation of whether the given individual may flee or continue his or her criminal activities (Art. 126).

The CCP contains the right to legal appeal of one's placement into custody. However the court is given the right to examine only the formal legal correctness of the implementation of this measure of restraint, with no right or possibility of examining the merits of the circumstances surrounding the need for its use. The existing procedures make legal

appeal of the use of placement into custody ineffectual, and such appeals are made in practice exceptionally rarely and are practically always without result.

Significant violations of freedom and inviolability of the individual regularly occur when the law enforcement authorities disperse participants in the peaceful public opposition protests.

Participants in such events and innocent bystanders are forced into buses that transport them to police stations. It is not uncommon that detained individuals are beaten, insulted and subject to other forms of humiliation while they are en route. The detained individuals are photographed and fingerprinted in the police stations. Many of those who have been detained are set free without any procedural documents having been put together and are commonly subject to administrative penalties.

There are even cases when participants in these demonstrations, without any official arrest documents having been done, are taken out of town and released far from any population centers or public transportation routes.

During the Presidential campaign in 2006 preventative arrests of hundreds of opposition activists were widely applied just before public demonstrations were held. As a rule, they were brought in for petty violations of public order, and punished with administrative arrests of 5 to 15 days.

In 2008-2009 in excess of 2 million people were subject to forced fingerprinting under various forms of intimidation. This procedure was applied on the basis of an illegal resolution issued by the Minister of Interior intended to collect information as part of the investigation into the case of bombings in Minsk in the summer of 2008. Citizens' complaints against these violations on the part of police officers are not being examined in the proper manner by the prosecutor's office and courts.

The Right of Individuals Deprived of Liberty to Humane Treatment and Dignity [5]

In recent years in Belarus the list of punishments not involving isolation from society has been legislatively expanded, and various measures intended to decrease the number of inmates have been applied; the problem of extreme prison overpopulation has been generally resolved (the problem remains for the temporary holding facilities), and work is underway to decrease disease in the prisons. However, the country is still among the «leaders» in terms of «prison population.» No comprehensive measures to humanize the criminal-correction system (CCS) have been undertaken, and it is still primarily intended for punishment and not for the social adaptation of persons deprived of their liberty. CCS is still responsible for solving crimes, which in practice leads to the domination of the interests of the investigative work over all other responsibilities. This is made possible by the fact that CCS is part of the Ministry of Internal Affairs.

The excessive secrecy of the preliminary detention and penal systems does not allow us to establish the public controls necessary for their effective functioning. Civic commissions have been created by the Ministry of Justice, however their composition and formation procedures have predetermined their ineffectiveness. Human rights advocates systematically receive huge numbers of complaints about blatant violations of prisoners' rights, including artificially created administrative barriers to submitting complaints. Departmental compliance bodies and prosecutorial oversight can also hardly be called

effective as there are distinct manifestations of the trend towards «protecting the uniform» and of the accusatorial function of the Prosecutor's office.

Disciplinary punishments are often combined with inadmissible restrictions; the procedures for their application create premises for arbitrary and excessive punishment. Legal appeal of disciplinary punishments is impossible due to a lack of specialized regulatory controls.

Throughout the CCS system problems with access to and the effectiveness of medical assistance are notable, caused first and foremost by a shortage of funding. Despite the measures that are being taken the incidence of tuberculosis has grown threateningly large and, according to several studies, exceeds rates in society in general by 25-30 times.

Police jails and temporary holding cells, as a rule, are distinctive for their worse conditions than those in the penitentiary system. There are many facts testifying to the extremely unsatisfactory food, a lack of elementary sanitation, hygiene and bedding, detention in unheated facilities during the colder seasons, and degrading treatment by the staff. Under these conditions placements into these facilities should be qualified as torture or cruel treatment and punishment.

The Right to a Fair Trial and Other Procedural Rights [6]

The Constitution guarantees each individual the protection of his rights and freedoms by a competent, independent and impartial court within a timeframe established by law (Art. 60). The Constitution states that judges are independent and subject only to the law. Any interference in the work of the judges in the discourse of justice is impermissible and punishable under law.

In actual fact the principal of judicial independence is violated seriously. In 2000 this problem was studied by a U.N. Special Rapporteur on the Question of the Independence of Judges and Lawyers. The report pointed out serious violations of the principals of independence of judges in Belarus. However, not one of the recommendations contained in that report have been implemented by the Government of Belarus.

The actual participation of judicial self-governance in the process of selecting people to serve as judges, their subsequent career advancement, as well as the issue of their dismissal has been minimized. The selection of judges is performed by the Ministry of Justice and its various local entities. Selected candidates are approved by qualification panels of judges, ratified by the heads of local government administrations, and then by the Security Council and Personnel Department of the Presidential Administration, where a final decision is taken and where a Presidential decree making the appointment is signed. Judges appointed for the first time serve for five years, and then permanently. Quite often, based upon a judge's performance he or she will be appointed for another five years-moreover, there exist no specific legislative criteria for when a judge should be appointed permanently or for a new five-year term. In this situation, judges are extremely vulnerable and the potential to pressure them is increased.

Starting in 2000 and in subsequent years the Code of Criminal Procedure, the Code of Civil Procedure, the Code of Commercial Procedure, as well as the Code of Execution Procedure for Administrative Violations, have been introduced. The new legislation broadened the possibility of adversarial trials, the functions of defense, participation of the parties in presenting evidence. The rights and obligations of the parties in a trial were

formulated more clearly, however, in actual practice, these changes failed to exclude an accusatorial bias in the trial process. The number of exonerations has practically not changed and remains under 0.3%. The practice of illegal application of the criminal justice system to political opponents and social activists continues.

There are serious problems insuring public access to trials. Judges arbitrarily apply justification for conducting cases in closed session, especially when they are handling high-profile corruption cases involving the highest echelons of power, as well as politically motivated cases. There are number of instances when impediments have been created for members of the press and human rights advocates. A ban has been instituted on lawyers releasing any information from a preliminary investigation. Moreover the law does not define the criteria for determining what information from a criminal case is subject to protection from disclosure. In fact what happens is that this leads lawyers, facing the threat of criminal responsibility, to refuse to release any information on their cases including those pertaining to violations of their clients' procedural rights.

In 2006 amendments were made to the Code of Criminal Procedure that introduced a special procedure for criminal cases pertaining to the particular categories of individuals whose official positions were in the personnel registry of the President. Any decision regarding initiating a criminal case against such individuals, as well as the application to them of any restraining measures, may be taken only by the Prosecutor General with the approval of the President. Any one of them may be released from criminal liability prior to trial by the President through the voluntary restitution of any damages caused. The process of releasing one from criminal responsibility is not transparent; the President's resolutions in this regard are not published.

Despite the Conclusion of the Constitutional Court of June 23, 1999, verdicts and decisions of the Supreme Court in cases heard by it in the first instance are not subject to appeal.

Ordinary citizens do not have the right to submit Constitutional complaints. Only the President, the Government, the Chambers of the Parliament, the Supreme Court and The Supreme Commercial Court, can submit statutory acts for review of their constitutionality, however this mechanism has been ineffectual, inasmuch as the listed bodies have initiated no such reviews over the past ten years.

The Right to Freedom of Thought, Conscience and Religion [7]

The Constitution establishes that all religions and faiths are equal before the law (Part 1 Art. 16). However, Part 2 of that same article states that «the relationship between the state and religious organizations is regulated by the law with consideration to their influence on the formation of the spiritual, cultural and state traditions of the Belarusian people.» The criteria for such an influence are not defined. This gives rise to the differentiated attitude to religions on the part of Belarusian officials. This sort of attitude is present in the 2002 revised edition of the Law «On the Freedom of Conscience and Religious Organizations.» It lists five confessions that are considered to be linked to the history of Belarus: Orthodoxy, Catholicism, Lutheranism, Islam and Judaism. The ones not listed are de facto considered by the officials to be alien to the Belarusian people (primarily this would be the Neo-protestant denominations). The revised edition of the Law has given rise to serious criticism.

The activity of unregistered religious organizations has been legislatively forbidden under the penalty of administrative and criminal liability. Starting in 2001 and continuing

until today, believers of various faiths have been held administratively liable for «establishing religious organizations and running them without registering their charters in the stipulated manner.» However, the law establishes excessive requirements for registering religious organizations.

Under the Law «On Freedom of Conscience and Religious Organizations,» religious organizations are divided into communes and associations. Religious associations can be created if there are no less than ten religious communes of the same faith, of which at least one conducts its activities on the territory of Belarus for no less than twenty years. Only religious associations have the right to establish their own media outlets, create religious schools and train clerics, and invite foreign clerics. This restricts the possibility of exercising their faith for all those religious denominations that have only recently been active in Belarus.

Religious communes only have the right to operate on the territory of the particular population center where they are registered. Members of religious organizations do not have the right to propagate their religious beliefs or conduct any religious activity (preach, distribute literature, conduct services, etc.) outside of the territory of the population center where that particular commune is registered. In fact religious organizations are forbidden from conducting missionary work, which for many of them is unacceptable under their religious views and gives rise to conflicts with the authorities.

The work of foreign religious workers has been complicated. In 2008-2009 there were still cases in Belarus of unjustified refusals to extend the visas of foreign citizens and deportations of foreign citizens in conjunction with their religious activities.

The activities of religious organizations in nonreligious facilities can be conducted only with the permission of the authorities. Receiving such permission for a number of communes has been exceedingly complex, hence they have been forced to violate this particular provision of the law and are held responsible for this.

Starting from the beginning of 1990s 26 religious confessions have been officially registered in Belarus. From the moment this law came into force not a single new confession has been registered despite their numerous efforts to do so.

Freedom of Speech [8]

The Constitution proclaims freedom of speech and the right to information (Arts. 33, 34). However, the provisions of Belarusian legislation and their implementation often contradict these constitutional guarantees. The Criminal Code contains six articles establishing liability for slander and denigrating the President, government officials, judges, as well as «discrediting the Republic of Belarus.» These articles have repeatedly been applied in practice.

A new law «On the Mass Media» came into force in February 2009. In part the law covers regulation of Internet-based media activities by government decree, requires re-registration of all media outlets, simplifies procedures for shutting down media organizations, and lowers the degree of protection of journalists and their publishers. Some of its repressive provisions (on the regulation of Internet-based media) have not been adopted or have been applied in a softer manner (re-registering of media outlets) under the pressure of international and Belarusian public opinion, however, as a whole the legal framework for media activity has worsened.

The Ministry of Information -- the Republic's body regulating own media -- has not abused its broad powers to issue sanctions since the new law has come into force. However, these powers, already exceptionally broad, became even more so.

The court imposed cessation of media activities is possible even after a single, grave violation of the law, or after two warnings for any, even most insignificant, violations. The Belarusian authorities interfere with the work of foreign reporters in the country; the Prosecutor's Office has made broad use of its powers to issue warnings to such journalists; prosecutors and KGB officials cite the law «On the Mass Media,» which forbids foreign journalists from working on the territory of the Republic of Belarus without accreditation. At the same time the Ministry of Foreign Affairs has refused to accredit foreign correspondents several times.

The authorities obstruct the distribution of nongovernmental publications. The state monopolists of media distribution through subscription and retail outlets - Belpochta and Soyuzpechat -- refuse to distribute practically half of the registered, independent socio-political publications. The Belarusian courts have refused the suits by these newspapers and their readers. The return to this system of distribution at the end of 2008 of the newspapers Narodnaya volya, and Nasha Niva, as well as the Bobruisky Kurier in 2009 -- are positive events, although this does not mark a full solution of the problem. The police continue their practice of detaining distributors of registered and unregistered publications and the confiscation of entire editions of newspapers and flyers. Police and KGB officers especially frequently confiscate published materials during electoral campaigns.

Access to information inside the country has worsened. Legislative acts adopted recently (for instance, amendments to the Law «On Civil Service») are directed towards limiting the distribution of uncensored information. In many regions, civil servants refuse to give the media any information without the approval of the local officials responsible for ideology. One of the methods used to limit access to information is refusing accreditation.

Law enforcement officials often interfere with the professional activities of journalists, including through the use of force, during mass protests. For a long time there has been no investigation of cases involving crimes against journalists, including murders and disappearances.

The Law «On Counteracting Extremism» adopted in 2007 has exerted the most negative influence on freedom of expression in Belarus. The definition of the terms «extremism» and «extremist activity» is presented in the law ambiguously and allows it to be abused in practice. The KGB initiated cases against publications using the law «On Counteracting Extremism.» These cases were halted under public pressure.

Freedom of Assembly [9]

The Constitution guarantees freedom of assembly that does not violate public order and the rights of other citizens. The manner in which they are organized and conducted is regulated foremost by the Law «On Large-Scale Public Events in the Republic of Belarus» (revised edition, 2003), as well as by local government authorities. Several of the existing legislative regulations seriously limit freedom of peaceful assembly in Belarus.

Belarus has an affirmative system for organizing and conducting assemblies. The complexity of the procedure and time required for receiving permission, and the potential for arbitrary refusal seriously limit freedom of peaceful assembly.

One such restriction involves the places for holding large-scale events. In practice, distant parks, public gardens, stadiums and other poorly frequented locations are often selected by local officials to hold such large-scale events often making them meaningless.

The law instructs the organizers of such assemblies to pay expenses incurred conducting them (maintaining of public order, medical services, and cleanup of the site). The organizers bear material responsibility for any damage caused to the state, citizens and organizations participating in the mass event. These provisions often serve as a basis for forbidding such mass events or for launching disproportionate civil suits for damages supposedly caused to organizations responsible for cleaning the streets.

Practically every peaceful assembly conducted without official permission has been halted by the law enforcement authorities, and ended with mass arrests of its participants and the use of physical force and special equipment by the police. In several cases the participants and organizers were held criminally responsible for the organization or active participation in group actions that crudely violated public order.

Freedom of Association [10]

The Constitution guarantees to every individual freedom of association. The only exceptions pertain to judges, prosecutorial officials, internal affairs officials, officials of the Committee of State Control, security officials, military servicemen becoming members of political parties and other associations pursuing political goals.

The law establishes a complicated procedure for registering civic organizations including political parties and unions. Compared to commercial organizations which require minimal efforts and whose registration is conducted in a declarative manner within a few days, the registration of civic associations requires the preparation of numerous documents and takes over a month. The formulated in the law grounds for refusing registration leave open the possibility for arbitrary rejection, and several associations have for many years encountered continuous refusals to their registration. A rejected registration can be appealed in court, but the courts have never satisfied any of these complaints.

Since 2000 not a single new political party has been registered in Belarus, and many parties have had their registration rejected. The number of civic associations has remained constant from 2002 to 2009, around 2,250 organizations. Many youth and human rights groups trying to register have met with rejections.

A serious obstacle to creating new associations is the requirement for both national as well as local associations to have offices in a nonresidential building. Public associations and their branches may not be registered at a private apartment address of one of the founders.

All activities of unregistered public associations, parties, religious associations have been banned from 1999, and since 2005 criminal liability has been introduced for these activities. Article 193-1 of the Criminal Code establishes a deprivation of freedom for a period of up to two years for participation in the activities of an unregistered civic or religious association, party or foundation (regardless of its purposes or the nature of its activities). From 2006 until 2009 at least 17 people have been convicted under this article, including those deprived of their liberty.

Independent unions have met with serious problems: the ban on unregistered trade unions, barriers to their mandatory registration (a complex procedure, the mandatory possession of a legal address excluding the possibility of registering at the home of the

head of the union, high rents, restrictions on creating and running unions at enterprises, institutions, organizations and other places of work (study). Besides that, members of independent unions are subject to pressure from employers, discriminatory measures are used against them.

The Right to Take Part in the Government, to Vote and to be Elected [11]

The Constitution states that citizens have the right to participate in affairs of state both directly and through freely elected representatives. Elections are regulated by the Constitution, the Electoral Code, and decisions of local authorities. The direct participation of citizens in managing civic and state affairs is guaranteed through the conduct of referendums, discussion of draft laws and issues of national and local significance, and other methods defined under law. Citizens participate in discussion of issues of state and civic life at national and local assemblies.

Starting in 1996 in Belarus all elections and referendums conducted have been declared by election observation missions of the ODIHR OSCE as not conforming to international standards for democracy, freedom and transparency of the electoral process. From the moment the Electoral Code was adopted in 2000 it has been repeatedly criticized both by international institutions and national observers, human rights activists and political parties.

Equality before the Law, the Ban on Discrimination [12]

The Constitution and other regulatory legal acts contain bans on discrimination, however there is no definition of it. Only the Labor Code lists possible grounds for imputation of discrimination. No court practice for hearing cases of discrimination has been formed, inasmuch as the courts do not to accept discrimination as the subject of a suit, refuse to explore the legal precedent for analogous cases, without which it is impossible to prove discrimination in a particular case. The courts in hearing suits for the recovery of pain and suffering caused by discrimination in their decisions have cited that the Civil Code contains a strict and all-encompassing list of points for which you can hold one responsible for pain and suffering and discrimination is not part of it.

There is discrimination on the basis of physical and psychological health. The policies of the state toward persons with disabilities are not directed toward their integration in society, but to their segregation as a special group. The authorities do not make sufficient efforts to create a barrier free environment in populated centers, which especially concerns wheelchair-bound persons with disabilities. As a positive moment, we must note the state program to create a barrier free environment, however its fulfillment has been insufficient.

Discrimination against citizens for their political convictions has received particular public scrutiny. Repression has been applied against individuals demonstrating opposition points of view: selective use of work contracts (dismissal from work), expulsion from educational institutions, arbitrary detention before large-scale events and major political campaigns, the creation of obstructions during election campaigns, restrictions on freedom of association and free assembly, conscription in violation of required procedures.
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We should note the existence of discrimination based upon language. The official state languages are Belarusian and Russian, and their equality is encompassed in the constitution. However, in practice, discrimination against Belarusian-speaking citizens is noted. An absolute majority of regulatory legal acts are not published in Belarusian, including the codes. The Military Charter does not conform to the Constitution and the Law «On Languages»: the Charter states that commands have to be issued in Russian. Discrimination in the Army is obvious: commanders lacking the Belarusian language publicly express their negative attitude towards it and servicemen issuing commands in the Belarusian language are disciplined.

The problem of homophobia exists in society, and state media are silent about it, several of which are noted for homophobic and discriminatory publications. Street protests of homosexuals in Belarus are not permitted.

Economic, Social and Cultural Rights [13]

Starting in 2004, on the basis of Presidential Decree No. 29, employers forced employees to enter into short-term contracts. Ninety percent of the workers signed contracts that were, as a rule, for a term of 1-3 years. These short-term contracts drastically worsened the situation of employees, since the employer has the right to dismiss a worker upon the expiration of the contract with no explanation of the reasons. At the same time the employee does not have the right to break a contract unilaterally before the end of its term.

At the level of each enterprise these short-term contracts are used by the employers to intimidate independent union activists, and individuals demonstrating opposition views. In this situation unions are unable to help employees upon the expiration of their contracts. The contract system limits the constitutional right to work, and contradicts labor law and international labor standards. We will provide citations.

There is a problem receiving an education in the Belarusian language. No continuity between educational institutions of different educational levels is insured for the Belarusian language in Belarus. There is practically no opportunity to receive a higher education in the Belarusian language in an absolute majority of fields of study. The administration of higher educational institutions has made no effort to accommodate students wishing to study in Belarusian-language classes.

Recommendations of Belarusian NGOs for the Universal Periodic Review of Belarus in the UN Human Rights Council

1. endeavour to observe and encourage human rights whereby the office of ombudsman and national institutions for human rights issues should be created in accordance with the Paris Principles;

2. cooperate with the Charter based and Treaty based UN human rights bodies, submit reports promptly in fulfilment of its obligations to implement their recommendations and take steps to put into practice the ideas of the UN Human Rights Committee regarding individual complaints;

3. introduce a moratorium on the death penalty, ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and take steps to remove the death penalty from the penal system;

4. ratify the International Convention for the Protection of all Persons from Enforced Disappearance;

5. recognize the competence of the Committee on the Elimination of Racial Discrimination under art.14 of the Convention on the Elimination of Racial Discrimination (individual complaints);

6. take steps to broaden instruction to include human rights at all levels of education;

7. define the concept of discrimination in the legislation and ensure that defenders of the victims of discrimination have effective access to the courts;

8. do not allow discrimination against any person or group for whatever reason including for political or other persuasions;

9. ensure that state officials and officers in the law enforcement agencies are given instruction in the problems of discrimination and why it cannot be tolerated;

10. eliminate other incidents of discrimination for political or other reasons and ensure that every incident of discrimination is investigated;

11. take the necessary steps to complete investigations into the cases of the disappearance of the political figures, V. Gonchar, D. Zavadskiy, Yu. Zakharenko and A. Krasovskiy, and bring those responsible to justice;

12. set up procedures for detention in accordance with international standards, transfer the powers to authorise detention and to select measures of restriction to the judiciary, leaving the possibility of using detention as a measure of restriction for motives of a particular gravity only;

13. ban the imprisonment and solitary confinement of citizens in cases not relating to infringement of the law after suppressing the system of preventive treatment by medical means and hard labour;

14. stop the practice of arbitrarily arresting citizens for political reasons and take effective steps to investigate existing cases of illegal arrests;

15. continue efforts in the fight against torture and make a declaration recognizing the competence of the Committee against Torture under arts 21 and 22 of the Convention against Torture;

16. implement in the national legislation the concept of torture given in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that cases of torture and inhuman treatment will be effectively investigated;

17. endeavour to reform the penal system in order to fulfil the Minimum Standards of the regulations for treating prisoners which will include bringing conditions in prisons and places of detention into line with international standards in the sphere of human rights;

18. take additional steps to ensure that punishment is humane and transfer the penal administrative system into the hands of the Ministry of Justice;

19. ensure that officers in the penal system and the forces of law and order are instructed in human rights matters;

20. create real possibilities for civil control over conditions of detention in prisons and other places where citizens are detained against their will;

21. take steps to increase the independence of the judiciary and lawyers and fulfil the recom-

mendations of the UN Special Rapporteur on the independence of judges and lawyers;

22. promote the role of the judiciary in Belarus and do not let the executive interfere in the administration of justice; ensure appropriate publicity for the judicial process; take steps to allow more citizens the possibility of a legal defence by conceding the right of constitutional complaint;

23. drop the cases of persons being found guilty of refusing to serve in the army on conscientious grounds and pass a law on an alternative civic service;

24. ensure the appropriate creation of a right to profess religions which will include inviting foreign clergy;

25. ensure that all branches of the state authorities, including those working in state institutions, fully respect and encourage the freedom to express one's opinion;

26. take effective steps to ensure the freedom of the independent media, both domestic and foreign;

27. grant equal economic conditions for the variously owned media, release all non-state socio-political publications from the system of the state monopoly distributed press and eliminate the administrative and economic pressure on economic subjects who work with the editorial staff of the independent media, including the press;

28. take steps to increase access to information, set up, in accordance with international standards, legislation governing the right of journalists to access information on the activities of state institutions, simplify the procedures for allowing official representatives of the foreign media to set up offices in Belarus and also introduce the applicant principle of accreditation;

29. pass, in accordance with international standards, legislation on the media, eliminate criminal responsibility for defamation of high ranking officials and discrediting the state and do not allow violations of the right to receive and disseminate information under the pretence of counteracting extremism;

30. effectively investigate and prosecute by judicial process crimes and violations against journalists and human rights defenders and bring the guilty to justice;

31. pass legislation in accordance with international standards relating to freedom of assembly after simplifying and curtailing the procedure of notification, suppress the obligation for organisers to pay the costs of guaranteeing law and order and safety of citizens and suppress the unfounded restrictions on place, time and procedure for holding events;

32. implement suitably the duty of the state to defend the right to peaceful assembly by improving the mechanisms and procedures which will enable the freedom of assembly to be practised without excessive bureaucratic regulation;

33. investigate every case of unfounded prohibition on conducting a peaceful assembly and the persecution of its participants;

34. repeal the ban on the activity of unregistered social organisations, funds, political parties and religious organisations and simplify the procedures for their state registration;

35. stop the persecution of political party and civil society activists;

36. continue to work at fulfilling the recommendations of OSCE and of the Venice Commission of the Council of Europe to improve the electoral law and its implementation with the aim of creating an appropriate guarantee that citizens can participate in state affairs;

37. take steps to ensure the real equality of the two state languages and in particular ensure that legislation is passed in both state languages;

38. eliminate problems relating to receiving education in Belarusian once the continuity of language in education is ensured at various levels;

39. continue efforts to create unrestricted means and other conditions necessary for ensuring real equality for persons with limited opportunities;

40. continue efforts to establish gender equality;

41. endeavour to take real steps to encourage tolerance towards and eliminate the discrimination of persons from minority sexual orientation or gender identity;

42. conscientiously implement the ILO Convention No 105 on the Abolition of Forced Labour:

- amend the law on servicemen by removing from it the possibility of using the labour of servicemen which is not linked with their military service;
- refuse to carry out the compulsory assignment of graduates from all levels of educational institutions as a means of mobilising and using the work force for the needs of the economic development of the country;
- suppress from the legislation the regulations which provide for the compulsory labour of parents who are obliged to repay the day-care expenses for their children after they have been taken away from them and also any criminal responsibility attaching to their refusal to engage in labour connected with such repayment;
- refuse to implement the compulsory sentence of hard labour as a measure of medical-social rehabilitation of persons placed in medical-labour corrective institutions;

43. take steps to restrict the unfounded widespread and arbitrary use of written agreement as a form of employment contract;

44. take effective steps to ensure education is provided in the languages of national minorities;

45. encourage and widen cooperation with groups of civil society in carrying out follow-up measures and implementing the results of this review.

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